

Docket No.: 1259-0233P
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hideaki OGAWA

Application No.: 10/625,603

Confirmation No.: 7924

Filed: July 24, 2003

Art Unit: 2621

For: MOVING IMAGE RECORDING APPARATUS
AND METHOD OF RECORDING MOVING
IMAGE

Examiner: T. C. Chio

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Madam:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on February 6, 2009, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205.2:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- Appendix A Claims
- Appendix B Evidence
- Appendix C Related Proceedings

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

FUJI PHOTO FILM CORPORATION

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 28 claims pending in application.

B. Current Status of Claims

1. Claims canceled: none;
2. Claims withdrawn from consideration but not canceled: none;
3. Claims pending: 1-28;
4. Claims allowed: none;
5. Claims rejected: 1-28.

C. Claims On Appeal

The claims on appeal are claims 1-28.

IV. STATUS OF AMENDMENTS

There was no after final amendment submitted.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The parenthetical expressions in the following Summary refer to details from embodiments in the Specification for explanatory purposes. These citations should not be relied on to unduly limit the scope of the claim.

The invention set forth in independent claim 1 is a moving image recording apparatus for recording moving image data on a recording medium. [Figure 1; Page 2, lines 12-16] Specifically, the moving image recording apparatus comprises a judgment device for judging whether a record format of said recording medium is suitable for recording said moving image data. [Figure 3, steps S100 and S102; Page 2, lines 23-25; Page 3, lines 16-20; Page 7, lines 2-6]

In addition, the moving image recording apparatus includes a recording medium controller for controlling operation of said recording medium. [Figure 1, item 68; Page 2, lines 25-27] The recording medium controller reformats the recording medium with a high-speed record format suitable for recording moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data. [Figure 3, steps S100, S102 and S108; Page 2, lines 27-31; Page 3, lines 11-20; Page 7, lines 16-19]

Claim 2 sets forth the moving image recording apparatus as recited in claim 1 further comprises wherein said recording medium controller detects the presence or absence of existing data in said recording medium when said record format is unsuitable for recording said moving image data. [Figure 3, steps S100, S102 and S104; Page 3, lines 1-4; Page 7, lines 7-9]

The invention set forth in independent claim 5 is a method for recording moving image data on a recording medium which includes the step of detecting a record format of said recording medium. [Figure 3, step S100; Page 3, lines 11-14; Page 6, lines 28-30] Also, the method of claim 5 includes the step of judging whether said record format of said recording medium is suitable for recording said moving image data. [Figure 3, step S102; Page 7, lines 2-6] In addition, the method of claim 5 includes the step of reformatting said recording medium with a high-speed record format suitable for recording said moving image data when said record format is judged to be unsuitable for recording said moving image data. [Figure 3, step S108; Page 7, lines 16-19]

Claim 6 sets forth the method as recited in claim 5, further comprising the step of detecting the presence or absence of existing data recorded on said recording medium, when said

record format is judged to be unsuitable for recording said moving image data. [Figure 3, step S104; Page 7, lines 7-9] The method also includes the step of temporarily evacuating said existing data to an internal memory when said existing data is in said recording medium. [Figure 3, step S106; Page 7, lines 9-16] Additionally, the method includes the step of reconstructing said existing data evacuated to said internal memory in said reformatted recording medium. [Figure 1, item 34; Figure 3, step S116; Page 8, lines 23-28]

The invention set forth in independent claim 7 is an information processing device for recording moving image data on a recording medium. [Figure 1; Page 2, lines 12-16] Specifically, the information processing device comprises a judgment device for judging whether a record format of said recording medium is suitable for recording said moving image data. [Figure 3, steps S100 and S102; Page 2, lines 23-25; Page 3, lines 16-20; Page 7, lines 2-6] In addition, the information processing device includes a recording medium controller for controlling operation of said recording medium. [Figure 1, item 68; Page 2, lines 25-27] The recording medium controller reformats the recording medium with a high-speed record format suitable for recording said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data. [Figure 3, steps S100, S102 and S108; Page 2, lines 27-31; Page 3, lines 11-20; Page 7, lines 16-19]

Claim 8 sets forth the moving image recording apparatus as recited in claim 7 which further recites that the recording medium controller detects the presence or absence of existing data in said recording medium when said record format is unsuitable for recording said moving image data. [Figure 3, steps S100, S102 and S104; Page 3, lines 1-4; Page 7, lines 7-9]

Claim 11 sets forth the moving image recording apparatus as recited in claim 1, wherein suitability of said recording medium is determined based on the cluster size of the recording medium. [Page 1, line 19 to Page 2 line 2]

Claim 12 sets forth the moving image recording apparatus as recited in claim 11, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously. [Page 1, line 19 to Page 2, line 2]

Claim 17 sets forth the method for recording moving image data as recited in claim 5, wherein the judging step further comprises determining the suitability of the recording medium based on the cluster size of the recording medium. [Page 1, line 19 to Page 2 line 2]

Claim 18 sets forth the method for recording moving image data as recited in claim 17, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously. [Page 1, line 19 to Page, 2 line 2]

Claim 23 sets forth the information processing device as recited in claim 7, wherein suitability of said recording medium is determined based on the cluster size of the recording medium. [Page 1, line 19 to Page 2, line 2]

Claim 24 sets forth the information processing device as recited in claim 23, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously. [Page 1, line 19 to Page 2, line 2]

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1, 5, 7 and 11-28 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Satoh (U.S. Patent No. 5,914,787; hereinafter “Satoh”) in view of Tanaka et al. (U.S. Patent No. 6,845,438 B1; hereinafter “Tanaka”).
- B. Whether dependent claims 2-4, 6 and 8-10 were properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Satoh in view of Tanaka and further in view of Brown, III et al. (U.S. Patent No. 6,038,636; hereinafter “Brown”).

VII. ARGUMENT

A. The rejection of claims 1, 5, 7 and 11-28 under 35 U.S.C. § 103(a) as being unpatentable over Satoh et al. (U.S. Patent No. 5,914,787) in view of Tanaka et al. (U.S. Patent No. 6,845,438 B1) is improper because the combination fails to disclose each and every claimed element.

For a Section 103 rejection to be proper, a *prima facie* case of obviousness must be established *M.P.E.P* § 2142. One requirement to establish *prima facie* case of obviousness is that the prior art references must teach or suggest all claim limitations. *M.P.E.P* § 2142; *M.P.E.P* 706.02(j). Thus, if the cited references fail to teach or suggest one or more elements, then the rejection is improper and must be withdrawn. For at least the following reasons, Appellant respectfully submits that Satoh and Tanaka fail to teach or suggest each and every claimed element.

1. The combination of Satoh and Tanaka fails to teach or suggest judging whether a record format of a recording medium is suitable for recording said moving image data as recited in claims 1, 5, 7, 14-16, 20-22 and 26-28.

As described above, claim 1 recites a moving image recording apparatus for recording moving image data on a recording medium, said moving image recording apparatus comprising: a judgment device for judging whether a record format of said recording medium is suitable for recording said moving image data; a recording medium controller for controlling operation of said recording medium, said recording medium controller reformatting said recording medium with a high-speed record format suitable for the record of said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data.

The Examiner asserts that Satoh et al. teaches “judging whether a disc is formatted and if the disc is not formatted, the formatting process will be started to format the disc in Fig. 91, column 33 and line 42-column 34 and line 12.” [Office Action of October 30, 2008, Page 2] In addition, the Examiner asserts that “[w]hen the disc is in a non-formatted state, it is not suitable for recording moving image data at high speed. When the disc is in a formatted state, it is suitable for recording moving image data at high speed. Thus the disc has to be formatted to be suitable for recording moving image data at high speed if it is [judged to be] non-formatted.” [Office Action of October 30, 2008, Page 2] Applicants respectfully disagree with the Examiner’s assertion. Specifically, Satoh fails to teach or suggest “a judgment device for judging *whether a record format* of said recording medium *is suitable for recording said moving image data.*” [Claim 1]

The Examiner asserts Satoh describes a judgment process in columns 33 and 34; however, Satoh is merely describing an erasing process that may consist of formatting. Satoh describes a formatting operation commencing means for commencing a formatting operation for the applied storage device in response to an erase operation switch means. [Column 3, lines 40-44] For example, in an erasure mode, when a formatted memory card is located, an all-data-erase preparation state is brought about and a display is shown. [Column 33, lines 64-67] After a trigger switch is depressed by the user, the memory card format is checked. [Column 33, line 67 to Column 34, line 1] If formatting is detected, the all-data-erasing is ended by merely erasing data that has been stored in the management area. [Column 343, lines 1-4 and lines 17-18] When a non-formatted memory card is located, a memory check and management area writing are executed. [Column 34, lines 15-17]

Satoh only determines whether a card is formatted or is non-formatted when an erasure is requested. No determination is made in Satoh as to suitability of a *record format* of the recording media for any type of data to be recorded onto the media. The Examiner asserts that when “a disc is in a formatted state, it is suitable for recording moving image at high speed.” [Office Action of October 30, 2008, Page 2] Applicants respectfully disagree with the Examiner’s assertion. It is well known by one skilled in the art that not all formatting types are suitable for every given purpose or for every device. Judging whether or not something is formatted is very different

from judging whether or not something is suitably formatted for a particular purpose. Specific formatting types are necessary based on the type of the device or processing to be performed. Specifically, one can not generalize all formatting types into the category of being suitable for a specific purpose, one must look at the properties of the format type present in order to determine suitability. Satoh only discloses a device, which determines if a record format is present.

Therefore, the asserted combination of Satoh and Tanaka (assuming these references may be combined, which Applicant does not concede) fails to establish prima facie obviousness of any pending claim. Accordingly, claim 1 is distinguishable from the combination of Satoh and Tanaka. Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

2. The combination of Satoh and Tanaka fails to teach or suggest a recording medium controller for controlling operation of said recording medium, said recording medium controller reformatting said recording medium with a high-speed record format suitable for the record of said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data as recited in claims 1, 5, 7, 14-16, 20-22 and 26-28.

Claim 1 recites the “recording medium controller reformatting said recording medium with a high-speed record format suitable for the record of said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data.”

The Examiner asserts that Satoh does not teach “achieving high-speed recording of moving image by reformatting the memory card in a camera.” However, the Examiner asserts that Tanaka teaches “that it is possible to achieve high-speed recording of moving images in a camera (col. 24, lines 11-32).” [Office Action of October 30, 2008, Page 4] However, the mere fact that high-speed recording may be achieved is not equivalent to disclosing that a determination is made whether or not a record format is suitable for high-speed recording.

Tanaka et al. discloses a memory system that uses a storage medium that maps logical memory blocks to physical memory blocks as part of its file management system. More specifically, Tanaka discusses providing “a method for controlling a memory system so as to prevent the delimiter of a cluster serving as a basic unit of file management on the DOS from

straddling a block serving as a unit of erase, thereby providing a high-speed data writing.” [Col 6, lines 37-42] Tanaka at Column 24, lines 11-33 only mentions cluster size in disclosing that “if the cluster size is an integer times as large as the block size and if the cluster delimiter is coincident with the delimiter block size...it is possible to increase the writing speed.” [Column 24, lines 11-33]

Tanaka is merely stating that in a memory card in which a particular cluster size is used, the file can be easily erased when the cluster size is an integer times as big as the block size. Tanaka is concerned with deleting files and that when a deletion is performed such that a cluster area is erased simultaneously with the FAT (file allocation table), the number of erase and write operations occurring during a time when data is rewritten is reduced. [Column 24, lines 11-22 and lines 39-49] When a minimal number of processes are occurring, writing may happen at a faster speed. Tanaka is not concerned with determining the suitability of the record format of the recording medium or reformatting an unsuitable record format.

Nothing in Tanaka teaches or suggests the recording medium will be reformatted with a high-speed record format when it is determined that said record format is unsuitable for recording said moving image data. [Claim 1]

Therefore, the asserted combination of Satoh and Tanaka (assuming these references may be combined, which Applicant does not concede) fails to establish *prima facie* obviousness of any pending claim. Accordingly, claim 1 is distinguishable from the combination of Satoh and Tanaka. Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

3. The combination of Satoh and Tanaka fails to teach or suggest a moving image recording apparatus wherein suitability of said recording medium is determined based on the cluster size of the recording medium as recited in claims 11, 13, 17, 19, 23 and 25.

In addition to the arguments presented above, the combination of Satoh and Tanaka fails to teach the “suitability of said recording medium is determined based on the cluster size of the recording medium” as recited in claim 11.

The Examiner asserts that Tanaka teaches “the moving image recording apparatus, wherein suitability of said recording medium is determined based on the cluster size of the

recording medium (col. 24, lines 19-22).” [Office Action of October 30, 2008, page 4] Applicants respectfully disagree. Specifically, Tanaka fails to teach or suggest determining suitability of a recording medium based on cluster size. In fact, Tanaka is not concerned with determining the suitability of a particular type of record format; rather Tanaka is directed to performing the most efficient erase procedure to use less processing power.

Tanaka discloses “if the cluster size is an integer times as large as the delimiter of block size, the file body part can be easily erased.” [Column 24, lines 19-22] Tanaka is merely describing an erase procedure that erases a cluster of data, where the cluster is an integer times as big as the block size. Tanaka is concerned with deleting files and that when a deletion is performed such that a cluster area is erased simultaneously with the FAT (file allocation table), the number of erase and write operations occurring during a time when data is rewritten is reduced. [Column 24, lines 11-22 and lines 39-49] When a minimal number of processes are occurring, writing may happen at a faster speed. Tanaka is not concerned with determining the suitability of the record format of the recording medium.

Tanaka fails to teach or disclose “wherein suitability of said recording medium is determined based on the cluster size of the recording medium.” [Claim 11] Therefore, the asserted combination of Satoh and Tanaka (assuming these references may be combined, which Applicant does not concede) fails to establish *prima facie* obviousness of any pending claim. Accordingly, claim 11 is distinguishable from the combination of Satoh and Tanaka for at least these reasons. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

4. The combination of Satoh and Tanaka fails to teach or suggest a moving image recording apparatus wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously as recited in claims 12, 18 and 24.

In addition to the arguments presented above, the combination of Satoh and Tanaka also fails to the “high-speed record format corresponds to a record format with a cluster size large

enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously” as recited in claim 12.

The Examiner asserts that Tanaka teaches “wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously (col. 24, lines 11-32), since the high-speed writing in the subsequent image writing sequence is enabled, the cluster size is large enough to record moving image data at a speed fast enough such that photography....” [Office Action of October 30, Page 4]

Tanaka discloses performing high-speed writing after clusters are used to delete FATs, which should make it possible for the continuous capture of still pictures and also to capture moving pictures. [Column 24, lines 11-12] Tanaka does not disclose a format that would allow one to continuously capture moving images at a high-speed.

Tanaka only discloses deleting a size of file body that is equal to a cluster that is an integer value of a block size. The cluster size could be very small and would not be sufficient for writing of high-speed moving images since the only requirement in Tanaka is that the cluster size is an integer value of a block size. The cluster size in Tanaka is limited to an integer value of a block size so that a whole block may be deleted without having difficulty, which results when deleting clusters of a size smaller than a block size. [Column 23, lines 49-60] In addition, while Tanaka does disclose the capability of capturing a moving image, Tanaka does not disclose a record format as having a cluster size large enough to allow moving images to be captured substantially continuously.

Since Satoh and Tanaka both fail to teach or suggest the “a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously,” the combination of these two references cannot possibly disclose or suggest said element. [Claim 12] Therefore, even if one skilled in the art were motivated to combine Satoh and Tanaka, the combination would still fail

to establish *prima facie* obviousness of claim 12 because the combination fails to disclose each and every claimed element. Accordingly, reconsideration and withdrawal of the rejection of claims 12, 18 and 24 is respectfully requested.

B. The rejection of claims 2-4, 6 and 8-10 under 35 U.S.C. § 103(a) as being unpatentable over Satoh et al. (U.S. Patent No. 5,914,787) in view of Tanaka et al. (U.S. Patent No. 6,845,438 B1) as applied to claims 1, 5 and 7, and further in view of Brown, III et al. (U.S. Patent No. 6,038,636) is improper because the combination fails to disclose each and every claimed element.

As discussed above, if the cited references fail to teach or suggest one or more elements, then a rejection under 35 U.S.C. § 103(a) is improper and must be withdrawn. For at least the following reasons, Appellant respectfully submits that the combination of Satoh, Tanaka and Brown fails to teach or suggest each and every element of claims 2-4, 6 and 8-10.

In addition to the arguments presented above, the combination of Satoh, Tanaka and Brown fails to teach or suggest the “recording medium controller detects the presence or absence of existing data in said recording medium when said record format is unsuitable for recording said moving image data” as recited in claim 2. In rejecting claim 2, the Examiner asserts that Brown discloses said element. However, the Examiner’s assertion is unfounded.

Brown is concerned with restoring and defragmenting a flash memory device upon a user request or other action such as saving a large file or scheduling an update. [Column 2, line 66-Column 2, line 22; Column 5, lines 38-67] Brown fails to disclose determining the suitability of the record format, much less detecting “the presence or absence of existing data in said recording medium when said record format is *unsuitable* for recording said moving image data.”

Since Satoh, Tanaka and Brown each fail to teach or suggest the “the presence or absence of existing data in said recording medium when said record format is *unsuitable* for recording said moving image data,” the combination of these two references cannot possibly disclose or suggest said element. Therefore, even if one skilled in the art were motivated to combine Satoh, Tanaka and Brown, the combination would still fail to render claim 2 unpatentable because the combination fails to disclose each and every claimed element. Accordingly, reconsideration and withdrawal of the rejection of claims 2-4, 6 and 8-10 is respectfully requested.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

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Respectfully submitted,

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/625,603.

Claim 1. (Original) A moving image recording apparatus for recording moving image data on a recording medium, said moving image recording apparatus comprising:

 a judgment device for judging whether a record format of said recording medium is suitable for recording said moving image data;

 a recording medium controller for controlling operation of said recording medium, said recording medium controller reformatting said recording medium with a high-speed record format suitable for the record of said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data.

Claim 2. (Original) A moving image recording apparatus as recited in claim 1, wherein said recording medium controller detects the presence or absence of existing data in said recording medium when said record format is unsuitable for recording said moving image data.

Claim 3. (Original) A moving image recording apparatus as recited in claim 2, further comprising:

 an internal memory for temporarily storing said existing data; and

 an internal memory controller for recording said existing data recorded on said recording medium onto said internal memory when said record format is unsuitable for recording said moving image data.

Claim 4. (Original) A moving image recording apparatus as recited in claim 3, wherein said recording medium controller records said existing data recorded on said internal memory onto said reformatted recording medium.

Claim 5. (Original) A method for recording moving image data on a recording medium, said method comprising the steps of:

- (a) detecting a record format of said recording medium;
- (b) judging whether said record format of said recording medium is suitable for recording said moving image data; and
- (c) reformatting said recording medium with a high-speed record format suitable for recording said moving image data when said record format is judged to be unsuitable for recording said moving image data.

Claim 6. (Original) A method as recited in claim 5, further comprising the steps of:

- (d) detecting the presence or absence of existing data recorded on said recording medium, when said record format is judged to be unsuitable for recording said moving image data;
- (e) temporarily evacuating said existing data to an internal memory when said existing data is in said recording medium; and
- (f) reconstructing said existing data evacuated to said internal memory in said reformatted recording medium.

Claim 7. (Original) An information processing device for recording moving image data on a recording medium, said information processor comprising:

- a judgment device for judging whether a record format of said recording medium is suitable for recording said moving image data;
- a recording medium controller for controlling operation of said recording medium, said recording medium controller reformatting said recording medium with a high-speed record format suitable for recording said moving image data when said judgment device judges that said record format is unsuitable for recording said moving image data.

Claim 8. (Original) An information processing device as recited in claim 7, wherein said recording medium controller detects the presence or absence of existing data in said recording medium when said record format is unsuitable for recording said moving image data.

Claim 9. (Original) An information processing device as recited in claim 8, further comprising:

an internal memory for temporarily storing said existing data; and

an internal memory controller for recording said existing data recorded on said recording medium onto said internal memory when said record format is unsuitable for recording said moving image data.

Claim 10. (Original) An information processing device as recited in claim 9, wherein said recording medium controller records said existing data recorded on said internal memory onto said reformatted recording medium.

Claim 11. (Previously Presented) The moving image recording apparatus as recited in claim 1, wherein suitability of said recording medium is determined based on the cluster size of the recording medium.

Claim 12. (Previously Presented) The moving image recording apparatus as recited in claim 11, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 13. (Previously Presented) The moving image recording apparatus as recited in claim 11, wherein an unsuitable record format for recording said moving image data corresponds to a record format with a cluster size which is insufficient to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 14. (Previously Presented) The moving image recording apparatus as recited in claim 1, wherein said judgment device judges the suitability of the record format of said recording medium before photography or during photography of the moving image data.

Claim 15. (Previously Presented) The moving image recording apparatus as recited in claim 14, wherein said judgment device judges the suitability of the record format of said recording medium upon a depression of a shutter button initiating photography of the moving image data.

Claim 16. (Previously Presented) The moving image recording apparatus as recited in claim 14, wherein said judgment device judges the suitability of the record format of said recording medium upon a switching of the moving image recording apparatus to a moving image photography mode.

Claim 17. (Previously Presented) The method for recording moving image data as recited in claim 5, wherein the judging step further comprises determining the suitability of the recording medium based on the cluster size of the recording medium.

Claim 18. (Previously Presented) The method for recording moving image data as recited in claim 17, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 19. (Previously Presented) The method for recording moving image data as recited in claim 17, wherein an unsuitable record format for recording said moving image data corresponds to a record format with a cluster size which is insufficient to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 20. (Previously Presented) The method for recording moving image data as recited in claim 5, wherein said judging step is performed before photography or during photography of the moving image data.

Claim 21. (Previously Presented) The method for recording moving image data as recited in claim 20, wherein said judging step is performed upon a depression of a shutter button initiating photography of the moving image data.

Claim 22. (Previously Presented) The method for recording moving image data as recited in claim 20, wherein said judging step is performed upon a switching of the moving image recording apparatus to a moving image photography mode.

Claim 23. (Previously Presented) The information processing device as recited in claim 7, wherein suitability of said recording medium is determined based on the cluster size of the recording medium.

Claim 24. (Previously Presented) The information processing device as recited in claim 23, wherein a high-speed record format corresponds to a record format with a cluster size large enough to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 25. (Previously Presented) The information processing device as recited in claim 23, wherein an unsuitable record format for recording said moving image data corresponds to a record format with a cluster size which is insufficient to enable the recording medium to record the moving image data at a speed fast enough such that photography of the moving image data can be performed substantially continuously.

Claim 26. (Previously Presented) The information processing device as recited in claim 7, wherein said judgment device judges the suitability of the record format of said recording medium before photography or during photography of the moving image data.

Claim 27. (Previously Presented) The information processing device as recited in claim 26, wherein said judgment device judges the suitability of the record format of said recording medium upon a depression of a shutter button initiating photography of the moving image data.

Claim 28. (Previously Presented) The information processing device as recited in claim 26, wherein said judgment device judges the suitability of the record format of said recording medium upon a switching of the moving image recording apparatus to a moving image photography mode.

APPENDIX B

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

APPENDIX C

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.